

Supreme Court, U. S.  
FILED

AUG 9 1976

MICHAEL RODAK, JR., CLERK

**APPENDIX**

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1975

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**No. 75-1312**

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**DON E. WILLIAMS COMPANY,**

*Appellant,*

vs.

**COMMISSIONER OF INTERNAL REVENUE,**

*Appellee.*

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**On Writ Of Certiorari To The United States Court  
Of Appeals For The Seventh Circuit**

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**PETITION FOR CERTIORARI FILED MARCH 13, 1976**

**CERTIORARI GRANTED JUNE 7, 1976**

## TABLE OF CONTENTS

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	PAGE
Docket Entries of the United States Tax Court .....	1
Docket Entries of the United States Seventh Circuit Court of Appeals .....	2
Petition filed in the Tax Court .....	3
Answer of the Respondent in the Tax Court .....	13
Stipulation filed in the Tax Court including Exhibits 5 through 16 .....	14-41
Order and Decision of the Tax Court .....	42
Order of the United States Supreme Court granting Certiorari .....	42

UNITED STATES TAX COURT  
DOCKET ENTRIES

No. 5946-71

8-24-71—Petition Filed: Fee Paid Aug. 24, 1971. Served Aug. 25, 1971.

8-24-71—Request by Petr. for trial at Chicago, Ill. Granted Aug. 25, 1971, Served Aug. 25, 1971.

10-8-71—Answer filed by Resp. Served Oct. 12, 1971.

3-17-72—Notice Of Trial on June 19, 1972 at Chicago, Ill. Served Mar. 17, 1972.

6-19-72—Trial at Chicago, Ill. before Judge Goffe.  
Stipulation of Facts filed (with att. exh.).  
Original Briefs Due—Aug. 3, 1972.  
Reply Briefs Due—Sept. 5, 1972.  
Submitted To Judge Goffe.

7-11-72—Transcript of June 19, 1972 received.

7-31-72—Motion by Petr. for continuance of the date for filing Brief, to Aug. 18, 1972. Granted July 31, 1972, Served Aug. 1, 1972.

8-18-72—Brief for Respondent filed. Served Aug. 24, 1972.

8-18-72—Brief for Petitioner filed. Served Aug. 24, 1972.

9-18-72—Reply Brief for Petitioner filed. Served Sept. 22, 1972.

9-20-72—Reply Brief for Respondent filed. Served Sept. 22, 1972.

5-14-74—Opinion filed, Judge Goffe. Served May 14, 1974.  
Decision will be entered for the respondent.

5-15-74—Decision Entered, Judge Goffe. Served May 15, 1974.

5-30-74—Order, that the decision entered on May 15, 1974, is hereby vacated and set aside, and further, Order And Decision Entered, Judge Goffe. Served May 30, 1974.

Appellate Proceedings

8-12-74—Notice Of Appeal to U.S.C.A., 7th Cir., filed by Petr. Served Aug. 13, 1974.

8-13-74—Notice of Filing with copy of notice of appeal sent to Mr. Meade Whitaker, Chief Counsel. Served Aug. 13, 1974.

8-13-74—Notice, to parties, of assembling and date for transmission of the record. Served Aug. 13, 1974.

U.S. COURT OF APPEALS  
SEVENTH CIRCUIT—DOCKET ENTRIES

No. 74-1812

11-1-74—Filed 0&2c of petitioner's motion for ext. of time to file brief and excerpts from record to 11/20/74 Svc.

11-4-74—Entered order that time for filing appellant's brief and appendix ext. only to 11/15/74.

11-15-74—Filed 15c of appellant's brief—Svc.

12-16-74—Filed 15c of appellee's brief—svc.

12-30-74—Filed 15c of appellant's reply brief—svc.

1-24-75—Entered order setting appeal for oral argument on 2/25/75 at 9:30 A.M. Oral argument limited to 20 min. per side.

2-25-75—Heard and taken under advisement.

12-16-75—Entered final judgment order Affirming.

12-16-75—Filed Opinion by Judge Fairchild.

12-29-75—Filed 0&1c of Appellee's Bill of Costs in the amount of \$55.90.

1-7-76—Mandate Issued.

1-16-76—Filed Receipt of Tax Court for Mandate and Record.

3-19-76—Filed Notice of Filing Petition for Cert., Supreme Court #75-1312, dated 3/13/76.

TAX COURT OF THE UNITED STATES

DON E. WILLIAMS COMPANY, No. 5946-71  
vs. Petitioner,  
COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION

The above named Petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (AP: CHI:CPG:LBM) dated May 25, 1971, and as a basis of its case alleges as follows:

1. The Petitioner is a corporation organized under the laws of the State of Illinois, with its principal office at 5402 Fourth Avenue, Moline, Illinois 61265. The returns for the periods here involved were filed with the District Director of Internal Revenue at Chicago, Illinois.
2. The notice of deficiency (a copy of which is attached and marked *Exhibit A*) was mailed to the Petitioner on May 25, 1971.
3. The deficiency as determined by the Commissioner is in income tax as follows:

<i>Fiscal Year Ending</i>	<i>Amount of Tax</i>
April 30, 1967	\$ 15,162.87
April 30, 1968	1,360.64
April 30, 1969	530.42
<b>Total Amount in dispute</b>	<b>\$ 17,053.93</b>

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

- a. The Commissioner erroneously determined for fiscal year ending April 30, 1967 that the delivery of the Petitioner's secured, interest-bearing, negotiable and payable on demand promissory note in the amount of \$31,589.32, within the "grace period" allowed an accrual basis Taxpayer by §404(a)(6) of the Internal Revenue Code of 1954 to the Don E. Williams Company Profit-Sharing Trust, did not constitute payment within the ambit of §404(a) of the Internal Revenue Code of 1954.
- b. The Commissioner erroneously determined for fiscal year ending April 30, 1968 that the delivery of the Petitioner's secured, interest-bearing, negotiable and payable on demand promissory note in the amount of \$34,333.26, within the "grace period" allowed an accrual basis Taxpayer by §404(a)(6) of the Internal Revenue Code of 1954 to the Don E. Williams Company Profit-Sharing Trust, did not constitute payment within the ambit of §404(a) of the Internal Revenue Code of 1954.
- c. The Commissioner erroneously determined for fiscal year ending April 30, 1969 that the delivery of the Petitioner's secured, interest-bearing, negotiable and payable on demand promissory note in the amount of \$35,337.86, within the "grace period" allowed an accrual basis Taxpayer by §404(a)(6) of the Internal Revenue Code of 1954 to the Don E. Williams Company Profit-Sharing Trust, did not constitute payment within the ambit of §404(a) of the Internal Revenue Code of 1954.
- d. The Commissioner erred in disallowing as a deduction from gross income the amount of \$31,589.32 for fiscal year ending April 30, 1967 claimed as a deduction by Petitioner on its return for a profit sharing contribution expense.

e. The Commissioner erred in disallowing as a deduction from gross income the amount of \$2,743.94 for fiscal year ending April 30, 1968 claimed as a deduction by Petitioner on its return for a profit sharing contribution expense.

f. The Commissioner erred in disallowing as a deduction from gross income the amount of \$1,004.60 for fiscal year ending April 30, 1969 claimed as a deduction by Petitioner on its return for a profit sharing contribution expense.

g. The Commissioner erred in determining a deficiency against Petitioner.

5. The facts upon which the Petitioner relies as the basis of this case are as follows:

- a. The Petitioner kept its books of account and prepared its income tax returns for fiscal years ending April 30, 1967, April 30, 1968 and April 30, 1969 on the accrual basis of accounting.
- b. Prior to April 30, 1967 the Board of Directors of the Petitioner incurred a liability for a profit sharing contribution to the Don E. Williams Company Profit Sharing Trust in the amount of \$31,589.32 and accrued such amount as an expense on its books of account.
- c. Prior to July 15, 1967 the Petitioner delivered its secured, interest-bearing, negotiable and payable on demand promissory note in the amount of \$31,589.32 to the Don E. Williams Company Profit Sharing Trust in payment of its fiscal year ending April 30, 1967 profit sharing contribution.
- d. Prior to April 30, 1968 the Board of Directors of the Petitioner incurred a liability for a profit sharing contribution to the Don E. Williams Company Profit Sharing Trust in the amount of \$34,333.26 and accrued such amount as an expense on its books of account.

- e. Prior to July 15, 1968 the Petitioner delivered its secured, interest-bearing, negotiable and payable on demand promissory note in the amount of \$34,333.26 to the Don E. Williams Company Profit Sharing Trust in payment of its fiscal year ending April 30, 1968 profit sharing contribution.
- f. Prior to April 30, 1969 the Board of Directors of the Petitioner incurred a liability for a profit sharing contribution to the Don E. Williams Company Profit Sharing Trust in the amount of \$35,337.86 and accrued such amount as an expense on its books of account.
- g. Prior to July 15, 1969 the Petitioner delivered its secured, interest-bearing, negotiable and payable on demand promissory note in the amount of \$35,337.86 to the Don E. Williams Company Profit Sharing Trust in payment of its fiscal year ending April 30, 1969 profit sharing contribution.

Wherefore, the Petitioner prays that this Court may try this case and determine:

- a. That the Petitioner is entitled to additional deductions for profit sharing contributions as above claimed;
- b. That there is no deficiency of income tax due by Petitioner for the fiscal years ended April 30, 1967, April 30, 1968 and April 30, 1969.

and give such other and proper relief as in the premises the Court may deem fit and proper.

/s/ D. P. Cooney  
Counsel for Petitioner  
P.O. Box 755  
Dubuque, Iowa 52001

#### VERIFICATION OF PETITION

State of Illinois  
County of Rock Island—ss:

Joseph W. Phillips, Jr., being duly sworn, says that he is the Executive Vice President of the Don E. Williams Company, the Petitioner above named, and as such is duly authorized to verify the foregoing petition; that he has read the foregoing Petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be on information and belief, and that those he believes to be true.

/s/ Joseph W. Phillips, Jr.

Subscribed and sworn to before me this 20 day of August, 1971 at Moline, Illinois.

/s/ Henry A. Gaull  
Notary Public in and for  
(Seal) Rock Island County, Illinois.

My commission expires the 1st day of June, 1975.

DEPARTMENT OF THE TREASURY—  
INTERNAL REVENUE SERVICE

#### EXHIBIT A

Don E. Williams Company  
5402 Fourth Avenue  
Moline, Illinois 61265

<i>Tax Year Ended</i>	<i>Deficiency</i>
April 30, 1967	\$15,162.87
April 30, 1968	\$ 1,360.64
April 30, 1969	\$ 530.42

Gentlemen:

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000 for any one taxable year. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court,

by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours,  
Randolph W. Thrower  
Commissioner

By /s/ Bernard H. Waklen  
Associate Chief  
Appellate Branch Office  
Midwest Region

Enclosures:  
Waiver, Form 870  
Statement  
Envelope

DEPARTMENT OF THE TREASURY—  
INTERNAL REVENUE SERVICE

WAIVER OF RESTRICTIONS ON ASSESSMENT AND  
COLLECTION OF DEFICIENCY IN TAX AND  
ACCEPTANCE OF OVERASSESSMENT

Pursuant to section 6213(d) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, the undersigned waives the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, and consents to the assessment and collection of the following deficiencies with interest as provided by law. The undersigned also accepts the following overassessments as correct:

DEFICIENCIES		
Year ended	Kind of Tax	Amount of Tax
April 30, 1967	Income	\$15,162.87
April 30, 1968	Income	1,360.64
April 30, 1969	Income	530.42

Name and Address of Taxpayer(s)  
(Number, street, city or town, State, ZIP Code)

Don E. Williams Company  
5402 Fourth Avenue  
Moline, Illinois 61265

DEPARTMENT OF THE TREASURY—  
INTERNAL REVENUE SERVICE

STATUTORY NOTICE STATEMENT

Don E. Williams Company  
5402 Fourth Avenue  
Moline, Illinois 61265

*Kind of Tax*

Income

<i>Taxable Year Ended</i>	<i>Deficiency</i>
April 30, 1967	\$15,162.87
April 30, 1968	1,360.64
April 30, 1969	530.42

Copy to Authorized Representative:

Mr. D. P. Cooney  
Arcade Building—Room 218  
P.O. Box 755  
Dubuque, Iowa 52001

DEPARTMENT OF THE TREASURY—  
INTERNAL REVENUE SERVICE

CORPORATION INCOME TAX

*Name*

Don E. Williams Company 4/30/67 4/30/68 4/30/69

*Taxable Income As Shown*

*In:*

Return As Filed

Preliminary Letter

*Dated*

Statutory Notice Dated \$ 55,947.29 \$ 85,984.74 \$ 58,756.91

*Increases (Decreases) In*

*Income (See attached explanation of items)*

(a) Deductions for profit	31,589.32	2,743.94	1,004.60
sharing plan			

<i>Taxable Income as Revised</i>	87,536.61	88,728.68	59,761.51
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A. Less: Excess Of Net Long-Term Capital Gain Over Net Short-Term Capital Loss (Alternative tax computation)			2,000.00
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B. Income Subject To Tax	87,536.61	88,728.68	57,761.51
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C. Partial Tax For In- come On Line B	35,517.57	36,089.77	21,225.52
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D. 25% Of Amount Shown On Line A (Alternative tax computation)			500.00
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E. Tax Surcharge	1,193.13	2,172.55	
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**F. Other Taxes**

<b>G. Subtotal (Lines C, D, E and F)</b>	<b>35,517.57</b>	<b>37,282.90</b>	<b>23,898.07</b>
<b>H. Tax Credits</b>			
Per return	350.85	124.72	106.64
<b>I. Income Tax Liability (Line G less Line H)</b>	<b>35,166.72</b>	<b>37,158.18</b>	<b>23,791.43</b>
<b>J. Income Tax Liability Shown On Return And Additional Assessment (Over-assessment)</b>			
Per return	20,003.85	35,797.54	23,261.01
<b>K. Deficiency (Overassessment)</b>	<b>\$ 15,162.87</b>	<b>\$ 1,360.64</b>	<b>\$ 530.42</b>

**EXPLANATION OF ITEMS**

(a) It is determined that the delivery by you of interest-bearing demand notes to the Trustees of the Don E. Williams Company Profit Sharing Trust does not represent payment within the meaning of section 404(a) of the Internal Revenue Code. It is therefore determined that you are not entitled to profit sharing contribution deductions in excess of cash payments made in each taxable year as shown below:

	<b>F 4-30-67</b>	<b>F 4-30-68</b>	<b>F 4-30-69</b>
Deduction claimed	\$31,589.32	\$34,333.26	\$35,337.86
Cash payments	-0-	31,589.32	34,333.26
Amount disallowed	\$31,589.32	\$ 2,743.94	\$ 1,004.60

Accordingly, your taxable income for each year is increased by the respective disallowed amounts above.

**UNITED STATES TAX COURT**

(Title omitted in printing)

**ANSWER**

The Respondent, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1., 2. and 3. Admits the allegations contained in paragraphs 1., 2. and 3. of the petition.

4. a. through g., inclusive. Denies the Commissioner erred as alleged in subparagraphs a. through g., inclusive, of paragraph 4. of the petition, or in any manner.

5. a. Admits the allegations contained in subparagraph a. of paragraph 5. of the petition.

b. through g., inclusive. Denies the allegations contained in subparagraphs b. through g., inclusive, of paragraph 5. of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the deficiencies determined by the respondent be in all respects approved.

/s/ K. Martin Worthy  
Chief Counsel  
Internal Revenue Service

#### STIPULATION OF FACTS

The parties stipulate that for the purpose of this case the following facts and attached exhibits may be accepted as true, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation and to object, at the time of trial, to any or all portions of this stipulation and attached exhibits as they may consider irrelevant or immaterial.

1. The petitioner is a corporation organized under the laws of the State of Illinois, with its principal office at 5402 Fourth Avenue, Moline, Illinois, 61265.

2. At all times material hereto, the petitioner kept its books of account and prepared its U.S. Corporation Income Tax Returns, Forms 1120, and supporting schedules, using an accrual method of accounting and a fiscal year ending April 30th.

3. At all times material hereto, the officers of the Don E. Williams Company and their percentage ownership of the outstanding capital stock (\$10.00 par value common stock) of the Petitioner were as follows:

Officer	Office	Percentage of Common Stock Owned
Don E. Williams, Jr.	President	87.08%
Joseph W. Phillips, Jr.	Vice President	4.17%
Alice R. Williams	Secretary-Treasurer	4.58%

4. The Petitioner filed its U.S. Corporation Income Tax Return, Form 1120, and supporting schedules for fiscal year ending April 30, 1967 with the District Director of Internal Revenue at Chicago, Illinois; a copy of which is attached hereto and marked Exhibit 1-A.

5. The Petitioner filed its U.S. Corporation Income Tax Return, Form 1120, and supporting schedules for fiscal year ending April 30, 1968 with the District Director of Internal Revenue at Chicago, Illinois; a copy of which is attached hereto and marked Exhibit 2-B.

6. The Petitioner filed its U.S. Corporation Income Tax Return, Form 1120, and supporting schedules for fiscal year ending April 30, 1969 with the District Director of Internal Revenue at Chicago, Illinois; a copy of which is attached hereto and marked Exhibit 3-C.

7. On November 27, 1963 the Board of Directors of petitioner adopted the Don E. Williams Company Profit Sharing Plan and established as a part thereof, the Don E. Williams Profit Sharing Trust.

8. On August 24, 1964 the District Director of Internal Revenue at Chicago, Illinois issued a "Determination Letter" approving the Don E. Williams Company Profit Sharing Plan and Trust, a copy of which is attached hereto as petitioner's Exhibit 4.

9. At all times material hereto, the Trustees of the Don E. Williams Company Profit Sharing Trust were as follows:

Name	Title
Don E. Williams, Jr.	Individual trustee
Joseph W. Phillips, Jr.	Individual trustee
Alice R. Williams	Individual trustee
First National Bank of Moline	Corporate trustee

10. On the 28th day of April, 1967 the Board of Directors of the Petitioner incurred a liability for a profit sharing contribution to the Don E. Williams Company Profit

Sharing Trust in the amount of \$31,589.32 and accrued such amount as an expense on its books of account for fiscal year ending April 30, 1967.

11. On the 26th day of May, 1967 the Petitioner delivered to the Trustees of the Don E. Williams Company Profit Sharing Trust, as and for payment of its profit sharing contribution for the fiscal year ending April 30, 1967, the following documents:

- a. A Collateral Promissory Note dated May 26, 1967 of the Petitioner in the amount of \$31,589.32, a copy of which is attached hereto as petitioner's Exhibit 5;
- b. An Assignment dated May 26, 1967 of Don E. Williams, Jr. of all his right, title and interest in and to his 4,180 shares of the \$10.00 par value common stock of the Don E. Williams Company, a copy of which is attached hereto as petitioner's Exhibit 6;
- c. An Assignment dated May 26, 1967 of Don E. Williams, Jr. of all his right, title and interest in and to his share of the Don E. Williams Company Profit Sharing Trust, a copy of which is attached hereto as petitioner's Exhibit 7;
- d. An Assignment dated May 26, 1967 of Joseph W. Phillips, Jr. of all his right, title and interest in and to his share of the Don E. Williams Company Profit Sharing Trust, a copy of which is attached hereto as petitioner's Exhibit 8.

12. Pursuant to the books of account of the Don E. Williams Profit Sharing Trust, the fair market value of the share of Don E. Williams, Jr. in the Don E. Williams Company Profit Sharing Trust as of April 30, 1967 was in excess of \$27,000.00.

13. Pursuant to the books of account of the Don E. Williams Profit Sharing Trust, the fair market value of the share of Joseph W. Phillips, Jr. in the Don E. Williams Company Profit Sharing Trust as of April 30, 1967 was in excess of \$12,000.00.

14. As of April 30, 1967, the fair market value of the net assets of Alice R. Williams exceeded \$120,000.00.

15. On the 4th day of April, 1968 the Petitioner delivered its check in the amount of \$33,353.03 to the Trustees of the Don E. Williams Company Profit Sharing Trust as and for full and complete payment of its liability on its Collateral Promissory Note dated May 26, 1967 of \$31,589.32 and interest accrued thereon of \$1,763.71.

16. On the 26th day of April, 1968 the Board of Directors of the Petitioner incurred a liability for a profit sharing contribution to the Don E. Williams Company Profit Sharing Trust in the amount of \$34,333.26 and accrued such amount as an expense on its books of account for the fiscal year ending April 30, 1968.

17. On the 24th day of May, 1968 the Petitioner delivered to the Trustees of the Don E. Williams Company Profit Sharing Trust, as and for payment of its profit sharing contribution for the fiscal year ending April 30, 1968, the following documents:

- a. A Collateral Promissory Note dated May 24, 1968 of the Petitioner in the amount of \$34,333.26, a copy of which is attached hereto as petitioner's Exhibit 9;
- b. An Assignment dated May 24, 1968 of Don E. Williams, Jr. of all his right, title and interest in and to his 4,180 shares of the \$10.00 par value common

stock of the Don E. Williams Company, a copy of which is attached hereto as petitioner's Exhibit 10;

- c. An Assignment dated May 24, 1968 of Don E. Williams, Jr. of all his right, title and interest in and to his share of the Don E. Williams Company Profit Sharing Trust, a copy of which is attached hereto as petitioner's Exhibit 11; and
- d. An Assignment dated May 24, 1968 of Joseph W. Phillips, Jr. of all his right, title and interest in and to his share of the Don E. Williams Company Profit Sharing Trust, a copy of which is attached hereto as petitioner's Exhibit 12.

18. Pursuant to the books of account of the Don E. Williams Profit Sharing Trust, the fair market value of the share of Don E. Williams, Jr. in the Don E. Williams Company Profit Sharing Trust as of April 30, 1968 was in excess of \$38,000.00.

19. Pursuant to the books of account of the Don E. Williams Profit Sharing Trust, the fair market value of the share of Joseph W. Phillips, Jr. in the Don E. Williams Company Profit Sharing Trust as of April 30, 1968 was in excess of \$17,000.00.

20. As of April 30, 1968, the fair market value of the net assets of Alice R. Williams exceeded \$120,000.00.

21. On the 28th day of April, 1969 the Petitioner delivered its check in the amount of \$36,381.81 to the Trustees of the Don E. Williams Company Profit Sharing Trust as and for full and complete payment of its liability on its Collateral Promissory Note dated May 24, 1968 of \$34,333.26 and interest accrued thereon of \$2,048.55.

22. On the 25th day of April, 1969 the Board of Directors of the Petitioner incurred a liability for a profit sharing contribution to the Don E. Williams Company Profit Sharing Trust in the amount of \$35,337.86 and accrued such amount as an expense on its books of account for fiscal year ending April 30, 1969.

23. On the 30th day of May, 1969 the Petitioner delivered to the Trustees of the Don E. Williams Company Profit Sharing Trust, as and for payment of its profit sharing contribution for the fiscal year ending April 30, 1969, the following documents:

- a. A Collateral Promissory Note dated May 30, 1969 of the Petitioner in the amount of \$35,337.86, a copy of which is attached hereto as petitioner's Exhibit 13;
- b. An Assignment dated May 30, 1969 of Don E. Williams, Jr. of all his right, title and interest in and to his 4,180 shares of the \$10.00 par value common stock of the Don E. Williams Company, a copy of which is attached hereto as petitioner's Exhibit 14;
- c. An Assignment dated May 30, 1969 of Don E. Williams, Jr. of all his right, title and interest in and to his share of the Don E. Williams Company Profit Sharing Trust, a copy of which is attached hereto as petitioner's Exhibit 15; and
- d. An Assignment dated May 30, 1969 of Joseph W. Phillips, Jr. of all his right, title and interest in and to his share of the Don E. Williams Company Profit Sharing Trust, a copy of which is attached hereto as petitioner's Exhibit 16.

24. Pursuant to the books of account of the Don E. Williams Profit Sharing Trust, the fair market value of the

share of Don E. Williams, Jr. in the Don E. Williams Company Profit Sharing Trust as of April 30, 1969 was in excess of \$50,000.00.

25. Pursuant to the books of account of the Don E. Williams Profit Sharing Trust, the fair market value of the share of Joseph W. Phillips, Jr. in the Don E. Williams Company Profit Sharing Trust as of April 30, 1969 was in excess of \$22,000.00.

26. As of April 30, 1969, the fair market value of the net assets of Alice R. Williams exceeded \$120,000.00.

27. On the 31st day of March, 1970 the Petitioner delivered its check in the amount of \$37,929.31 to the Trustees of the Don E. Williams Company Profit Sharing Trust as and for full and complete payment of its liability on its Collateral Promissory Note dated May 30, 1969 of \$35,337.86 and interest accrued thereon of \$2,591.45.

/s/ D. P. Cooney  
Counsel for Petitioner

/s/ Lee H. Henkel, Jr.  
Chief Counsel  
Internal Revenue Service

#### EXHIBIT 5

#### COLLATERAL PROMISSORY NOTE

For Value Received, the Don E. Williams Company, an Illinois corporation with its registered office located in Moline, Illinois, as Maker, Don E. Williams, Jr. of East Moline, Illinois, as an Accommodation Maker, Alice R. Williams, of Moline, Illinois, as an Accommodation Maker, Joseph W. Phillips, Jr., of Rock Island, Illinois, as an Accommodation Maker (hereinafter referred to collective-

ly as "Makers"), each as principal, jointly and severally, promise to pay to the order of the Don E. Williams Company Profit Sharing Trust, at Moline, Illinois, On Demand, the sum of Thirty-One Thousand Five Hundred Eighty-Nine Dollars and Thirty-Two Cents (\$31,589.32) with interest from May 1, 1967 at the rate of six percent (6%) per annum, payable at maturity.

The Makers hereof shall have the right and privilege at their option of making such prepayments of principal and interest at such time or times as they may in their discretion determine.

Any interest or principal not paid when due shall bear interest at the rate of seven percent (7%) per annum.

It is stipulated, that in any suit brought for the collection of this *Collateral Promissory Note*, a reasonable attorney's fee shall be allowed and taxed with the costs in such suit.

Don E. Williams, Jr., as and for collateral security for this promissory note, hereby deposits with the Don E. Williams Company Profit Sharing Trust the following; to-wit:

- (a). certificates No. 11 and 15 for four thousand one hundred eighty (4,180) shares of the Ten Dollars (\$10.00) par value common stock of Don E. Williams Company, together with an appropriate *Assignment*; and,
- (b). an *Assignment* of all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust.

Joseph W. Phillips, Jr., as and for collateral security for this promissory note, hereby deposits with the Don E. Williams Profit Sharing Trust an *Assignment* of all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust.

The obligation evidenced by this note, and by any extensions or renewals thereof in whole or in part, are included in the expression "such liabilities" as hereinafter used.

The Makers agree to deliver to the Trust additional securities to its satisfaction, on demand, should the market value of any of the securities at any time held hereunder decline, or should any of such securities for other reasons be deemed unsatisfactory to the Trust.

On the nonperformance of any of the promises herein contained, or upon the nonpayment of any of such liabilities at maturity, or in the case of the failure of the Makers to meet at maturity any liability of any of the Makers, either to the Trust or to any other party, or upon the failure of the Makers forthwith to furnish additional security to the satisfaction of the Trust as above provided, or upon the death, dissolution, termination of existence, declared insolvency or failure in business of, or appointment of a receiver for, or commission of any act of bankruptcy by, any of the Makers, or the entry of any judgment against any of the Makers, or a levy under a writ of attachment upon the credit or property of any of the Makers with the Trust, or in case any petition in bankruptcy shall be filed by or against any of the Makers, or any proceedings in bankruptcy or under any acts of Congress or other governmental authority relating to the relief of debtors should be commenced for the relief or readjustments of any indebtedness of any of the Makers, either through reorganization, composition, extension, or otherwise, all such liabilities of the Makers shall, at the option of the Trust, immediately mature and become forthwith due and payable, without remand or notice. In such event, full power and authority are hereby given the Trust to sell, assign, and deliver the whole or any part of such collateral at public or private sale, at such terms as it may deem best, without remand, advertisement, or notice of any kind, all of which are hereby expressly waived. If any such collateral is disposed of at private sale, the Trust shall be relieved from all liability or claim for inadequacy of price. At any such sale, the Trust may itself purchase the whole or any part of such collateral, free from any right of redemption on the part of any of the Makers, which is hereby waived and released.

In case of sale for any cause, or of receipt of any payments of principal or income on account of any of such collateral, the Trust may apply the proceeds of the sale or sales so made or the payments so received to pay any of such liabilities to the Trust, as the Trust or any one of its Trustees shall deem proper, returning the surplus, if any, to the appropriate Maker.

Notwithstanding the holding by the Trust of such collateral for the payment of such liabilities, or any sale, exchange, enforcement, collection of, realization upon, or compromise or settlement, actual or attempted, with reference to any of such collateral, the Makers shall be and remain liable for the payment in full of all such liabilities, except only to the extent that such liabilities, or any part thereof, shall be reduced by payment, or actual application thereon by the Trust of such collateral or the proceeds thereof.

The Trust shall not be liable for failure to collect, or demand payment of, or protest, or give notice of nonpayment of, such collateral, or any part thereof, or for any delay in so doing, nor shall the Trust be under obligation to take any action whatever in regard to such collateral or any part thereof.

The collateral may from time to time, by mutual consent, be exchanged for other property, which shall be held by the Trust subject to all the terms of this note. All the terms hereof shall apply to all notes given in extension or renewal of this note, and to all substituted and additional collateral.

The Trust may transfer this note, and may deliver and transfer the collateral or any part thereof then held, to any transferee, who shall thereupon become vested with all the rights of the Trust to the collateral so transferred, and the Trust shall thereafter be forever relieved and fully discharged from all liability or responsibility under this note as to such collateral or as indorser or otherwise; but as respects any collateral not so transferred the Trust shall retain all rights hereby given.

No delay on the part of any holder hereof in exercising any power or right hereunder shall operate as a waiver of any power or right; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof, or the exercise of any other power or right, and no waiver whatever shall be valid unless in writing, signed by the holder of this note, and only to the extent therein set forth. Should the Trust at any time make any call or calls for collateral or give any notice or notices of intention to sell collateral, or other notices, the making of such calls or the giving of such notices, no matter how many times repeated, shall not constitute a waiver of the right of the Trust to sell collateral, without demand or notice, in any of the contingencies herein enumerated in which the Trust is authorized to sell collateral without demand or notice.

Calls for collateral or any notices to any of the Makers by the Trust shall be addressed to the Makers at 5402 Fourth Avenue, Moline, Illinois.

Dated this 26th day of May, 1967 at Moline, Illinois.

Don E. Williams Company

(Corporate Seal)

By /s/ Don E. Williams  
Its President,  
Don E. Williams, Jr.  
Accommodation Makers  
/s/ Don E. Williams  
Don E. Williams, Jr.  
/s/ Alice R. Williams  
Alice R. Williams  
/s/ Joseph W. Phillips, Jr.  
Joseph W. Phillips, Jr.

EXHIBIT 6  
ASSIGNMENT

For Value Received, Don E. Williams, Jr. of East Moline, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, four thousand one hundred eighty (4,180) shares of the ten dollars (\$10.00) par value common stock of Don E. Williams Company, standing in the name of Don E. Williams, Jr. on the books of said corporation represented by certificates No. 11 and 15, attached hereto and by this reference made a part of this *Assignment*, and do hereby irrevocably constitute and appoint the Secretary of Don E. Williams Company, attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated this 26th day of May, 1967 at Moline, Illinois.

/s/ Don E. Williams, Jr.

State Of Illinois  
Rock Island County—ss:

On this 26th day of May, 1967, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Don E. Williams, Jr. to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal)

My commission expires May 27, 1967.

EXHIBIT 7  
ASSIGNMENT

For Value Received, Don E. Williams, Jr. of East Moline, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust arising by virtue of his status as an employee of the Don E. Williams Company, including the fair market value of his voluntary contributions as well as the fair market value of his share of the contributions made by the corporation.

Dated this 26th day of May, 1967 at Moline, Illinois.

/s/ Don E. Williams  
Don E. Williams, Jr.

State Of Illinois  
Rock Island County—ss:

On this 26th day of May, 1967, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Don E. Williams, Jr., to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal) My commission expires May 27, 1967.

EXHIBIT 8  
ASSIGNMENT

For Value Received, Joseph W. Phillips, Jr. of Rock Island, Illinois, hereby sells, assigns and transfers unto

Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust arising by virtue of his status as an employee of the Don E. Williams Company, including the fair market value of his voluntary contributions as well as the fair market value of his share of the contributions made by the corporation.

Dated this 26th day of May, 1967 at Moline, Illinois.

/s/ Joseph W. Phillips, Jr.

State Of Illinois  
Rock Island County—ss:

On this 26th day of May, 1967 before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Joseph W. Phillips, Jr., to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal) My commission expires May 27, 1967.

EXHIBIT 9  
COLLATERAL PROMISSORY NOTE

For Value Received, the Don E. Williams Company, an Illinois corporation with its registered office located in Moline, Illinois, as Maker, Don E. Williams, Jr. of East Moline, Illinois, as an Accommodation Maker, Alice R. Williams, of Moline, Illinois, as an Accommodation Maker, Joseph W. Phillips, Jr., of Rock Island, Illinois, as an Accommodation Maker (hereinafter referred to collectively as "Makers"), each as principal, jointly and severally,

promise to pay to the order of the Don E. Williams Company Profit Sharing Trust, at Moline, Illinois, On Demand, the sum of Thirty-Four Thousand Three hundred Thirty-Three Dollars and Twenty-Six Cents (\$34,333.26) with interest from May 1, 1968 at the rate of six percent (6%) per annum, payable at maturity.

The Makers hereof shall have the right and privilege at their option of making such prepayments of principal and interest at such time or times as they may in their discretion determine.

Any interest or principal not paid when due shall bear interest at the rate of seven percent (7%) per annum.

It is stipulated, that in any suit brought for the collection of this *Collateral Promissory Note*, a reasonable attorney's fee shall be allowed and taxed with the costs in such suit.

Don E. Williams, Jr., as and for collateral security for this promissory note, hereby deposits with the Don E. Williams Company Profit Sharing Trust the following; to-wit:

- (a). certificates No. 11 and 15 for four thousand one hundred eighty (4,180) shares of the Ten Dollars (\$10.00) par value common stock of Don E. Williams Company, together with an appropriate *Assignment*; and,
- (b). an *Assignment* of all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust.

Joseph W. Phillips, Jr., as and for collateral security for this promissory note, hereby deposits with the Don E. Williams Profit Sharing Trust an *Assignment* of all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust.

The obligation evidenced by this note, and by any extensions or renewals thereof in whole or in part, are included in the expression "such liabilities" as hereinafter used.

The Makers agree to deliver to the Trust additional securities to its satisfaction, on demand, should the market value of any of the securities at any time held hereunder decline, or should any of such securities for other reasons be deemed unsatisfactory to the Trust.

On the nonperformance of any of the promises herein contained, or upon the nonpayment of any such liabilities at maturity, or in the case of the failure of the Makers to meet at maturity any liability of any of the Makers, either to the Trust or to any other party, or upon the failure of the Makers forthwith to furnish additional security to the satisfaction of the Trust as above provided, or upon the death, dissolution, termination of existence, declared insolvency or failure in business of, or appointment of a receiver for, or commission of any act of bankruptcy by, any of the Makers, or the entry of any judgment against any of the Makers, or a levy under a writ of attachment upon the credit or property of any of the Makers with the Trust, or in case any petition in bankruptcy shall be filed by or against any of the Makers, or any proceedings in bankruptcy or under any acts of Congress or other governmental authority relating to the relief of debtors should be commenced for the relief or readjustment of any indebtedness of any of the Makers, either through reorganization, composition, extension, or otherwise, all such liabilities of the Makers shall, at the option of the Trust, immediately mature and become forthwith due and payable, without demand or notice. In such event, full power and authority are hereby given the Trust to sell, assign, and deliver the whole or any part of such collateral at public or private sale, at such terms as it may deem best, without demand, advertisement, or notice of any kind, all of which are hereby expressly waived. If any such collateral is disposed of at private sale, the Trust shall be relieved from all liability of claim for inadequacy or price. At any such sale, the Trust may itself purchase the whole or any part of such collateral, free from any right of redemption on the part of any of the Makers, which is hereby waived and released.

In case of sale for any cause, or of receipt of any payments of principal or income on account of any of such collateral, the Trust may apply the proceeds of the sale or sales so made or the payments so received to pay any of such liabilities to the Trust, as the Trust or any one of its Trustees shall deem proper, returning the surplus, if any, to the appropriate Maker.

Notwithstanding the holding by the Trust of such collateral for the payment of such liabilities, or any sale, exchange, enforcement, collection of, realization upon, or compromise or settlement, actual or attempted, with reference to any of such collateral, the Makers shall be and remain liable for the payment in full of all such liabilities, except only to the extent that such liabilities, or any part thereof, shall be reduced by payment, or actual application thereon by the Trust of such collateral or the proceeds thereof.

The Trust shall not be liable for failure to collect, or demand payment of, or protest, or give notice of nonpayment of, such collateral, or any part thereof, or for any delay in so doing, nor shall the Trust be under obligation to take any action whatever in regard to such collateral or any part thereof.

The collateral may from time to time, by mutual consent, be exchanged for other property, which shall be held by the Trust subject to all the terms of this note. All the terms hereof shall apply to all notes given in extension or renewal of this note, and to all substituted and additional collateral.

The Trust may transfer this note, and may deliver and transfer the collateral or any part thereof then held, to any transferee, who shall thereupon become vested with all the rights of the Trust to the collateral so transferred, and the Trust shall thereafter be forever relieved and fully discharged from all liability or responsibility under this note as to such collateral or as indorser or otherwise; but

as respects any collateral not so transferred the Trust shall retain all rights hereby given.

No delay on the part of any holder hereof in exercising any power or right hereunder shall operate as a waiver of any power or right; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof, or the exercise of any other power or right, and no waiver whatever shall be valid unless in writing, signed by the holder of this note, and only to the extent therein set forth. Should the Trust at any time make any call or calls for collateral or give any notice or notices of intention to sell collateral, or other notices, the making of such calls or the giving of such notices, no matter how many times repeated, shall not constitute a waiver of the right of the Trust to sell collateral, without demand or notice, in any of the contingencies herein enumerated in which the Trust is authorized to sell collateral without demand or notice.

Calls for collateral or any notices to any of the Makers by the Trust shall be addressed to the Makers at 5402 Fourth Avenue, Moline, Illinois.

Dated this 24th day of May, 1968 at Moline, Illinois.

Don E. Williams Company  
(Corporate Seal)

By /s/ Don E. Williams  
Its President,  
Don E. Williams, Jr.  
Accommodation Makers  
/s/ Don E. Williams  
Don E. Williams, Jr.  
/s/ Alice R. Williams  
Alice R. Williams  
/s/ Joseph W. Phillips, Jr.  
Joseph W. Phillips, Jr.

EXHIBIT 10  
ASSIGNMENT

For Value Received, Don E. Williams, Jr. of East Moline, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, four thousand one hundred eighty (4,180) shares of the ten dollars (\$10.00) par value common stock of Don E. Williams Company, standing in the name of Don E. Williams, Jr. on the books of said corporation represented by certificates No. 11 and 15, attached hereto and by this reference made a part of this *Assignment*, and do hereby irrevocably constitute and appoint the Secretary of Don E. Williams Company, attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated this 24th day of May, 1968 at Moline, Illinois.

/s/ Don E. Williams, Jr.

State Of Illinois  
Rock Island County—ss:

On this 24th day of May, 1968, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Don E. Williams, Jr. to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal)

My commission expires May 27, 1971.

EXHIBIT 11  
ASSIGNMENT

For Value Received, Don E. Williams, Jr. of East Moline, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust arising by virtue of his status as an employee of the Don E. Williams Company, including the fair market value of his voluntary contributions as well as the fair market value of his share of the contributions made by the corporation.

Dated this 24th day of May, 1968 at Moline, Illinois.

/s/ Don E. Williams  
Don E. Williams, Jr.

State Of Illinois  
Rock Island County—ss:

On this 24th day of May, 1968, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Don E. Williams, Jr. to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal)

My commission expires May 27, 1971.

EXHIBIT 12  
ASSIGNMENT

For Value Received, Joseph W. Phillips, Jr. of Rock Island, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit

sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust arising by virtue of his status as an employee of the Don E. Williams Company, including the fair market value of his voluntary contributions as well as the fair market value of his share of the contributions made by the corporation.

Dated this 24th day of May, 1968 at Moline, Illinois.

/s/ Joseph W. Phillips, Jr.

State Of Illinois  
Rock Island County—ss:

On this 24th day of May, 1968 before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Joseph W. Phillips, Jr., to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal) My commission expires May 27, 1971.

### EXHIBIT 13

#### COLLATERAL PROMISSORY NOTE

For Value Received, the Don E. Williams Company, an Illinois corporation with its registered office located in Moline, Illinois, as Maker, Don E. Williams, Jr. of East Moline, Illinois, as an Accommodation Maker, Alice R. Williams, of Moline, Illinois, as an Accommodation Maker, Joseph W. Phillips, Jr., of Rock Island, Illinois as an Accommodation Maker (hereinafter referred to collectively as "Makers"), each as principal, jointly and severally, promise to pay to the order of the Don E. Williams Com-

pany Profit Sharing Trust, at Moline, Illinois, On Demand, the sum of Thirty-Five Thousand Three Hundred Thirty-Seven Dollars and Eighty-Six Cents (\$35,337.86) with interest from May 1, 1969 at the rate of eight percent (8%) per annum, payable at maturity.

The Makers hereof shall have the right and privilege at their option of making such prepayments of principal and interest at such time or times as they may in their discretion determine.

Any interest or principal not paid when due shall bear interest at the rate of nine percent (9%) per annum.

It is stipulated, that in any suit brought for the collection of this *Collateral Promissory Note*, a reasonable attorney's fees shall be allowed and taxed with the costs in such suit.

Don E. Williams, Jr., as and for collateral security for this promissory note, hereby deposits with the Don E. Williams Company Profit Sharing Trust the following; to-wit:

- (a). certificates No. 11 and 15 for four thousand one hundred eighty (4,180) shares of the Ten Dollars (\$10.00) par value common stock of Don E. Williams Company, together with an appropriate *Assignment*; and,
- (b). an *Assignment* of all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust.

Joseph W. Phillips, Jr., as and for collateral security for this promissory note, hereby deposits with the Don E. Williams Profit Sharing Trust an *Assignment* of all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust.

The obligation evidenced by this note, and by any extensions or renewals thereof in whole or in part, are included in the expression "such liabilities" as hereinafter used.

The Makers agree to deliver to the Trust additional securities to its satisfaction, on demand, should the market

value of any of the securities at any time held hereunder decline, or should any of such securities for other reasons be deemed unsatisfactory to the Trust.

On the nonperformance of any of the promises herein contained, or upon the nonpayment of any of such liabilities at maturity, or in the case of the failure of the Makers to meet at maturity any liability of any of the Makers, either to the Trust or to any other party, or upon the failure of the Makers forthwith to furnish additional security to the satisfaction of the Trust as above provided, or upon the death, dissolution, termination of existence, declared insolvency or failure in business of, or appointment of a receiver for, or commission of any act of bankruptcy by, any of the Makers, or the entry of any judgment against any of the Makers, or a levy under a writ of attachment upon the credit or property of any of the Makers with the Trust, or in case any petition in bankruptcy shall be filed by or against any of the Makers, or any proceedings in bankruptcy or under any acts of Congress or other governmental authority relating to the relief of debtors should be commenced for the relief or readjustments of any indebtedness of any of the Makers, either through reorganization, composition, extension, or otherwise, all such liabilities of the Makers shall, at the option of the Trust, immediately mature and become forthwith due and payable, without demand or notice. In such event, full power and authority are hereby given the Trust to sell, assign, and deliver the whole or any part of such collateral at public or private sale, at such terms as it may deem best, without demand, advertisement, or notice of any kind, all of which are hereby expressly waived. If any such collateral is disposed of at private sale, the Trust shall be relieved from all liability or claim for inadequacy of price. At any such sale, the Trust may itself purchase the whole or any part of such collateral, free from any right of redemption on the part of any of the Makers, which is hereby waived and released.

In case of sale for any cause, or of receipt of any payments of principal or income on account of any of such collateral, the Trust may apply the proceeds of the sale or sales so made or the payments so received to pay any of such liabilities to the Trust, as the Trust or any one of its Trustees shall deem proper, returning the surplus, if any, to the appropriate Maker.

Notwithstanding the holding by the Trust of such collateral for the payment of such liabilities, or any sale, exchange, enforcement, collection of, realization upon, or compromise or settlement, actual or attempted, with reference to any such collateral, the Makers shall be and remain liable for the payment in full of all such liabilities, except only to the extent that such liabilities, or any part thereof, shall be reduced by payment, or actual application thereon by the Trust of such collateral or the proceeds thereof.

The Trust shall not be liable for failure to collect, or demand payment of, or protest, or give notice of nonpayment of, such collateral, or any part thereof, or for any delay in so doing, nor shall the Trust be under obligation to take any action whatever in regard to such collateral or any part thereof.

The collateral may from time to time, by mutual consent, be exchanged for other property, which shall be held by the Trust subject to all the terms of this note. All the terms hereof shall apply to all notes given in extension or renewal of this note, and to all substituted and additional collateral.

The Trust may transfer this note, and may deliver and transfer the collateral or any part thereof then held, to any transferee, who shall thereupon become vested with all the rights of the Trust to the collateral so transferred, and the Trust shall thereafter be forever relieved and fully discharged from all liability or responsibility under this note as to such collateral or as indorser or otherwise; but as respects any collateral not so transferred the Trust shall retain all rights hereby given.

No delay on the part of any holder hereof in exercising any power or right hereunder shall operate as a waiver of any power or right; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof, or the exercise of any other power or right, and no waiver whatever shall be valid unless in writing, signed by the holder of this note, and only to the extent therein set forth. Should the Trust at any time make any call or calls for collateral or give any notice or notices of intention to sell collateral, or other notices, the making of such calls or the giving of such notices, no matter how many times repeated, shall not constitute a waiver of the right of the Trust to sell collateral, without demand or notice, in any of the contingencies herein enumerated in which the Trust is authorized to sell collateral without demand or notice.

Calls for collateral or any notices to any of the Makers by the Trust shall be addressed to the Makers at 5402 Fourth Avenue, Moline, Illinois.

Dated this 30th day of May, 1969 at Moline, Illinois.

Don E. Williams Company  
By /s/ Don E. Williams  
Its President,  
Don E. Williams, Jr.  
Accommodation Makers  
/s/ Don E. Williams.  
Don E. Williams, Jr.  
/s/ Alice R. Williams  
Alice R. Williams  
/s/ Joseph W. Phillips, Jr.  
Joseph W. Phillips, Jr.

EXHIBIT 14  
ASSIGNMENT

For Value Received, Don E. Williams, Jr. of East Moline, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, four thousand one hundred eighty (4,180) shares of the ten dollars (\$10.00) par value common stock of Don E. Williams Company, standing in the name of Don E. Williams, Jr. on the books of said corporation represented by certificates No. 11 and 15, attached hereto and by this reference made a part of this *Assignment*, and do hereby irrevocably constitute and appoint the Secretary of Don E. Williams Company, attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated this 30th day of May, 1969 at Moline, Illinois.

/s/ Don E. Williams, Jr.

State Of Illinois  
Rock Island County—ss:

On this 30th day of May, 1969, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Don E. Williams, Jr. to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal)

My commission expires May 27, 1971.

EXHIBIT 15  
ASSIGNMENT

For Value Received, Don E. Williams, Jr. of East Moline, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust arising by virtue of his status as an employee of the Don E. Williams Company, including the fair market value of his voluntary contributions as well as the fair market value of his share of the contributions made by the corporation.

Dated this 30th day of May, 1969 at Moline, Illinois.

/s/ Don E. Williams  
Don E. Williams, Jr.

State Of Illinois  
Rock Island County—ss:

On this 30th day of May, 1969, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Don E. Williams, Jr. to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal) My commission expires May 27, 1971.

EXHIBIT 16  
ASSIGNMENT

For Value Received, Joseph W. Phillips, Jr. of Rock Island, Illinois, hereby sells, assigns and transfers unto Don E. Williams Company Profit Sharing Trust, the profit sharing trust of the employees of the Don E. Williams Company with its principal place of business located in Moline, Illinois, all his right, title and interest in and to the Don E. Williams Company Profit Sharing Trust arising by virtue of his status as an employee of the Don E. Williams Company, including the fair market value of his voluntary contributions as well as the fair market value of his share of the contributions made by the corporation.

Dated this 30th day of May, 1969 at Moline, Illinois.

/s/ Joseph W. Phillips, Jr.

State Of Illinois  
Rock Island County—ss:

On this 30th day of May, 1969, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Joseph W. Phillips, Jr., to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

/s/ Mary M. Zahnley  
Notary Public in and for  
Rock Island County, Illinois.

(Seal) My commission expires May 27, 1971.

UNITED STATES TAX COURT

No. 5946-71

DON E. WILLIAMS COMPANY,

*Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

ORDER AND DECISION

For cause appearing of record, it is

Ordered: That the decision entered on May 15, 1974, in the above-entitled case is hereby vacated and set aside, and it is further

Ordered and Decided: That there are deficiencies in income tax due from petitioner for the taxable years ended April 30, 1967, April 30, 1968 and April 30, 1969 in the amounts of \$15,162.87, \$1,360.64 and \$530.42, respectively.

(Signed) William A. Goffe  
Judge

SUPREME COURT OF THE UNITED STATES

No. 75-1312

DON E. WILLIAMS COMPANY,

*Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

Order Allowing Certiorari. Filed June 7, 1976.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

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